No. 94-757

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

DR. PAUL P. RICCHIO and FRANK FEDELE,

Petitioners,

vs.

DR. GERALD E. POESNECKER, DR. HAROLD E. BUTTRAM and VERNON R. BRIGGS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

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RESTATEMENT OF THE QUESTION PRESENTED

Have the Pennsylvania state courts interpreted a religious organization's sacred texts and practices and impermissibly resolved a dispute over the organization's religious leadership in contravention of the First and Fourteenth Amendment holdings of this Court and the uniform holdings of the other federal and state courts?

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COUNTERSTATEMENT OF THE CASE

Pursuant to the Respondents' obligation under Rule 15 they submit the following counterstatement of the case in order to correct the numerous misstatements of fact and impertinent matters that are offered by Petitioners as a foundation for their argument that the state courts have unlawfully interpreted religious law and practice to resolve a purely religious dispute over the spiritual leadership of a religious organization.

This action was commenced by Respondents who brought it in their capacity as directors of two non-profit Pennsylvania corporations. It was commenced as an Action in Equity for injunctive relief which was brought by Respondents by reason of the seizure of the corporate headquarters building by Petitioners and two other persons during the well-publicized absence of the corporate chief executive Respondent Poesnecker. The trial court immediately restored control of the corporate headquarters to Respondent pursuant to their Petition for Preliminary Injunction.

The Petitioners and their co-defendants in the courts below attempted to justify their seizure of corporate offices on a complex legal theory which the state courts uniformly rejected. They claimed to have acted by reason of their holding of positions of authority within the religious fraternity on a religious council known as the Council of Seven. Since the inception of this litigation, Petitioners' legal arguments have been dependent upon their claim that this council controls, directly or indirectly, all of the related religious and secular organizations, and that three of the original defendants and one other individual were in turn in lawful control of that council.

The trial court reviewed the procedure followed by Petitioners and their allies in connection with their seizure of the organizations. That court found that those procedures did not

meet the requirements of Pennsylvania corporate law, the bylaws of the subject non-profit corporations or the organization's own internal "Organic Laws."

The trial court made factual findings and/or legal conclusions as to persons who lawfully held positions in the organizations and identified Respondent Poesnecker as the properly appointed and incumbent Supreme Grand Master. The court also accepted his factual claim as to the persons who lawfully constituted his Council of Seven. In making these findings, the trial court was not required to intrude into any purely religious disputes nor required to interpret religious doctrine.

Dissatisfied with this result, the Petitioners, together with the other two original Defendants, initiated an appellate process which focused on alleged violations of their constitutional rights. They disclaimed the authority of the trial court to rule on matters that they had themselves submitted for its consideration and interpretation. Following argument before the Commonwealth Court of Pennsylvania en banc, the trial court's decision was upheld unanimously. The Supreme Court of Pennsylvania denied Petitioners' Petition for Allowance of Appeal. This Petition results from that denial.

REASONS FOR DENYING THE WRIT

The petition in this proceeding does not provide this Court with any special or important reason to grant a Writ of Certiorari. By reason of various changes in circumstances, Petitioners have no standing to prosecute this action and the same has become moot. The courts below properly adhered to the case law on which Petitioners rely, and they applied it in a manner that is fully consistent with the undisputed record facts. Petitioners can identify no decision rendered by this Court or by any other court that casts doubt upon, much less conflicts with, the outcome

reached here. The Petition presents no broad questions of general importance beyond the resolution of a controversy that is personal to the Petitioners themselves. In addition, a chaotic scenario would unfold from any modification of the state court determinations.

I.

THE APPEAL IS RENDERED MOOT BY A CHANGE IN CIRCUMSTANCES.

Your Petitioners are the only two remaining parties who had been Defendants in the original state court action. Respondents had named Petitioners as Defendants in the original action together with Defendants named Peter Poulos and Jack Kindle. The latter two parties had participated in the Petitioners' state court appeals but have not participated in this appeal and have elected to be bound by the state court decisions.

The argument of the original four Defendants was that three of them, Fedele, Poulos and Kindle, joined with a fourth party named MacDonald, and that they collectively and legally acted as a "majority" of the Council of Seven to remove Respondent Poesnecker from his religious office of Supreme Grand Master. They thereafter claimed to have taken lawful steps to replace all of the Respondents as the officers and directors of the affiliated non profit corporations. As stated above, this entire procedure was found invalid by the state courts for the reasons set forth in their various Adjudications, Opinions, Orders and Decrees which are attached as appendices to Petitioners' Petition.

At no time prior to the filing of this Petition had Petitioner Ricchio claimed to be a member of the Council of Seven. With respect to your other Petitioner, Frank Fedele, his claim of membership in the Council of Seven was the subject of great

scrutiny at the state court trial. After the trial testimony, including that of Fedele himself, involving interpretation of the fraternity's organizational documents, the trial court found that Fedele was not a member of the Council of Seven. It found that he had been properly and lawfully removed from that council by Respondent Poesnecker more than a year prior to the filing of this action.

The removal of Fedele is a factual finding of the trial court that was undisturbed by the Commonwealth Court of Pennsylvania. This finding eliminated any cognizable theory that the state court Defendants acting as a majority of the Council of Seven could have acted with any authority or legality. The withdrawal of Poulos and Kindle further erodes that claim. In effect Petitioners are attempting to perpetuate a claim which they have lost all standing to pursue. In order for Petitioners to have standing, it would be necessary for them to show that all essential parties needed to support Petitioners' claim have been brought before the Court by Petitioners' appeal. Even by their own theory, this would require that they present an undisputed majority of the legitimate and recognized Council of Seven. Petitioners cannot show any representative capacity for that council or for any other identifiable, set of principals within the religious organization. The state court rejected all of Petitioners' claims and factual bases for such a theory. Petitioners now represent only their personal interests in requesting this writ. On this basis, the request should be denied.

II.

PETITIONERS HAVE MISSTATED ESSENTIAL FACTS IN ORDER TO CHANGE THE NATURE OF THE LEGAL ISSUES AND IN ORDER TO CREATE AN ISSUE TO SUPPORT THIS PETITION.

When reviewing the Petitioners' stated reasons for allowing the appeal, it is important to remember that they have built their arguments around the misstated premise that the highest tribunal of this religious fraternity had officially acted to remove Respondent Poesnecker from the position of Supreme Grand Master. This premise is a foundation for all of their constitutional arguments since they need to argue that there was a refusal by the state courts to defer to a decision of such a tribunal.

The trial court carefully adhered to the "deference rule" when it identified Respondent Poesnecker as the legitimate Supreme Grand Master and deferred to his decision to remove from his Council of Seven Petitioner Frank Fedele.

At all times prior to the trial court's Adjudication and Decree Nisi, the Petitioners were consistently willing to permit the trial court to scrutinize the legality of their attempted removal of Respondent Poesnecker as Supreme Grand Master and as corporate Director General.[1] In stating prior to trial the "legal

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1. Correctly stated, the issues before the Court concern the validity of Defendants' actions in removing Plaintiff Gerald E. Poesnecker from his position as Director General/Supreme Grand Master of the Fraternity and corporate organizations.

Defendants' Answer to Plaintiffs' Motion in Limine App. A, *infra*, 3b.

It is the Defendants' contention that such replacement

(Cont'd)

issues anticipated", the Petitioners were clearly expecting the trial court to interpret the fraternity's Organic Laws as evidenced by the way that they framed a primary issue in their Pre-Trial Memorandum.[2]

(Cont'd)

> was accomplished in the manner dictated by the organization law. Central to resolving this issue is whether the Defendants had proper legal justification for removal of the former Director General/Supreme Grand Master and if so, whether such removal was properly effectuated.

Defendants' Brief in Opposition to Plaintiffs' Motion in Limine App. B, *infra*, 5b.

> The question before the court is whether the Defendants had a right to take the actions they undertook in displacing the Director General/Supreme Grand Master.

Id. 9b.

> The only question for the court is whether the Defendants acted properly in removing Gerald E. Poesnecker as the Director General/Supreme Grand Master . . .

Id. 11b.

> The court can determine whether the Director General/ Supreme Grand Master was properly removed.

Id. 9b.

2. Whether the actions taken by Defendants in the removal of Poesnecker from his position of Supreme

(Cont'd)

The "four man" Council of Seven contrived by Petitioners as the "highest judicatory" was easily found by the trial court to be a self-help entity whose edicts could be given no credibility or effect.[3] The Commonwealth Court reviewed the trial court's

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(Cont'd)

> Grand Master and thereby Director General and President of Beverly Hall Corporation, were in conformity with the Organic Law of the church and the Pennsylvania Non-Profit Corporation Code.

Defendants' Pre-Trial Memorandum p. 7.

3. We find that he [Poesnecker] was not removed from the office at the meeting held on September 12, 1989.

Trial Court's Adjudication Petitioners' App. C p. 41a.

> We find that the "meeting of the Council" presumably held on September 12, 1989 was not a valid meeting. Notice of the proposed meeting was not given to all of its members. A vote was allowed by proxy which is not provided for under any of the Organic Laws or other governing documents. The meeting was attended by Fedele, who had called the meeting, when he was no longer a member of the Council. It must be concluded that the removal of Poesnecker as Supreme Grand Master and the removal of Buttram and Briggs as Council members were therefore invalid.

Trial Court's Adjudication Petitioners' App. C p. 41a.

> . . . those four individuals who purported to act as the Council of Seven did so without authority, without appropriate notice to other members, and without the right of office which they purported to hold.

Trial Court's Opinion and Final Order Petitioners' App. C p. 26a.

findings of fact and literal language of the Organic Laws. It concurred that the action of Petitioners was invalid and of no legal effect.[4] In reaching his conclusions and findings in these matters, the trial judge was clearly permitted to consider and interpret the religious documents in a way now objected to by Petitioners since they had provided those documents to him personally in the expectation that he would use them for that specific purpose.[5]

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4. . . . this meeting did not result in a decision from the highest judicatory body of the Fraternity.

Commonwealth Court OpinionPetitioners' App. B p. 16a.

> . . . Mr. Poesnecker was not removed from the position of Supreme Grand Master as a result of a decision of the highest judicatory authority of the Fraternity.

Id. Petitioners' App. B p. 16a.

5. All of the foregoing conclusions were based on evidence of the rules and regulations, the Organic Law and the documents supplied by both sides of this dispute. The determination of the legal consequences of these several meetings, appointments and removals from office did not require any special interpretation of the inner workings, ritual rules or other similar structures of this religious/fraternal organization.

Trial Court's Opinion and Final Order Petitioners' App. C p. 27a.

The Organic Laws and other internal documents of the Fraternity were first made available to the court as Exhibits B & C to Petitioners' pleading entitled *Defendants' Response to Plaintiffs' Petition for Preliminary Injunction.*

The Petitioners were clearly aware of the trial court's intention to consider the religious documents and raised no objection to their use.[6] In their quest to preserve for the trial court the right to interpret religious documents, the Petitioners even suggested that the case did not involve doctrinal disputes.[7]

Throughout this litigation the courts and the litigants on both sides have made reference in their brief to this Court's decision in *Serbian E. Orthodox Diocese v. Miliojevich*, 426 U.S. 696 (1976). The principles stated therein are good law, and they are not in conflict with the state courts' decisions. In the *Miliojevich*

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6. The fact that a religious organization is involved means that much of the evidence presented will be in some remote way connected to an internal organic law dispute or possible doctrinal schism.

Defendants' Brief in Opposition to Plaintiffs' Motion in Limine App. B, *infra*, 6b.

7. It is specifically denied that the religious context gives rise to doctrinal issues which are outside the authority of this Court to consider.

Defendants' Answer to Plaintiffs' Motion in Limine App. A, *infra*, 2b.

> . . . this matter does not involve issues of doctrinal dispute.

Id. 2b.

> Where the disputes within a religious organization are questions of civil law, and not predicated on any religious doctrine, they can be solved by the civil courts without intruding into sacred precincts.

Defendants' Brief in Opposition to Plaintiffs' Motion in Limine App. B, *infra*, 7b.

case, the Illinois Supreme Court impermissibly substituted its own inquiry into church polity and resolutions based on those disputes while rejecting the decisions of the church's undisputed highest ecclesiastical tribunal. There is no such tribunal here to which deference could have been given as the trial court noted.[8]

The state courts' findings did not turn on any genuine controversy over religious doctrine or practice despite the suggestion of the Petitioners to the contrary. The inquiry of the state courts into matters that are even arguably religious law and polity was by no means extensive. The state courts merely reviewed a few key excerpts from the Organic Laws, the succession document of the Supreme Grand Master and the interpretative testimony of the witnesses called by both sides of the litigation. None of that testimony was objected to by Petitioners at trial on constitutional grounds. Petitioners now seek to re-cast the state court findings in order to create an issue which supports this petition. It is inappropriate to grant a Writ of Certiorari under these circumstances.

III.

THE RULE SOUGHT BY PETITIONERS WOULD BE CHAOTIC.

Both sides recognized the need to have the trial court identify the highest judicatory of the fraternity in the hope that the

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8. The disputes involved the highest offices within the hierarchy of this body. Therefore, there was no higher body from whom direction might be derived which would be determinative on this issue, without interpretation by the Court.

Trial Court's Opinion and Final Order Petitioners" App. C p. 23a

findings would confirm their group as the controlling parties. While the Petitioners assert that the state courts have improperly determined the religious leadership, they offer no conceivable explanation as to how the control of these significant religious and non-profit corporate organizations could ever be resolved through an existing internal procedural mechanism. In effect, if this Court intervened in the state court decisions, there would remain an insoluble ongoing dispute over control and ownership of property, contractual matters and financial affairs that are not ecclesiastical in nature. These problems could never be resolved without the minimal type of court intervention that the state courts interposed.

As set forth above, to apply the "rule of deference", a court must have an undisputed church judicatory to which it may defer. It has never been held in any court decision at any level that courts are required to leave litigants as they find them as, for example, where no clear authority can be identified within the religious organization which is worthy of the court's deference. At a minimum the court must identify that authority, and take steps to ensure that order and control will ultimately be restored to the organization. The state courts have taken such steps. If a court is confronted, as in the present cause, with a dispute that cannot be deferred to a higher judicatory, then there can be no violation of constitutional rights by reason of the court's consideration of matters arguably doctrinal in nature. *See St. John Chrysostom Greek Catholic Church v. Elko*, 436 Pa. 243, 259 A.2d 419, at 425.

CONCLUSION

Petitioners have attempted to entice this Court to grant their request for a Writ of Certiorari by their inaccurate portrayal of essential facts established by the state courts. In this respect the petition is neither professional nor intemperate. This Court would be justified in striking it simply by reason of the misstated and impertinent matter that it includes. *Wilkes County v. W. N. Coler & Co.*, 46 L. Ed. 1260 (1902); *Yellow Poplar Lumber Co. v. Chapman*, 215 U.S. 601, 54 L. Ed. 344, 30 S. Ct. 401 (1909).

Petitioners do not present to this Court an opportunity to settle an "important" federal law issue. They present issues which have been decided repeatedly in the progeny of *Miliojevich*. The importance of those decisions has been ratified by all of the litigants and state courts at all levels of these proceedings. There are no principles involved the settlement of which are important to the general public. This case is important only to the two individuals who seek to give it yet another transfusion of unwarranted legitimacy and credibility. For the reasons set forth above related to their change in circumstances, the case is moot and they retain no standing to continue this case.

The request for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A — DEFENDANTS' ANSWER TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE CONSIDERATION OF RELIGIOUS ISSUES

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COURT OF COMMON PLEAS
COUNTY OF BUCKS

CIVIL ACTION - IN EQUITY
NO. 89-007661

DR. GERALD E. POESNECKER, ET AL

vs.

PAUL RICCHIO ET AL

DEFENDANTS' ANSWER TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE CONSIDERATION OF RELIGIOUS ISSUES

AND NOW, come the Defendants, by and through their attorneys, ROEGER, WALKER & BAHLS, and pray this Honorable Court to enter an Order denying Plaintiffs' Motion in Limine to Preclude Consideration of Religious Issues. In support of this Motion, the Defendants aver as follows:

Appendix A

1. Admitted in part, denied in part. While it is admitted that the dispute involves various members of the cited Fraternity, it is denied that control of the corporate arm is "also in dispute". More correctly stated, the dispute centers around whether the Defendants acted properly in assuming control of the Beverly Hall Corporation.

2. Denied. It is specifically denied that the religious context gives rise to doctrinal issues which are outside the authority of this Court to consider. The dispute gives rise to neutral principles of law, over which the Court of equity has jurisdiction to protect property rights.

3. Admitted in part, denied in part. It is denied that the question of who, among the disputants, has a valid claim to leadership of The Fraternity is not before the Court. The question before the Court is whether Defendants acted properly in removing Plaintiff Gerald E. Poesnecker from his position as Director General/Supreme Grand Master and Briggs and Buttram from their positions on the Board of Directors of Beverly Hall Corporation. While it is admitted that the question of whether Plaintiff Gerald E. Poesnecker has engaged in misconduct in violation of the Spiritual Law of The Fraternity is not before the Court, the question concerning Poesnecker's repeated breaches of fiduciary duty owed the corporation are properly before the Court as illustrative of the reasons given by Defendants for his removal from the position of Director General/Supreme Grand Master.

4. Conclusion of law. No response required. By way of further answer, this matter does not involve issues of doctrinal dispute. The issues before the Court revolve around the justification and authority for Defendants' actions in removing Plaintiffs from their positions in a non-profit corporation.

Appendix A

5. Admitted in part, denied in part. While it is admitted that the Defendants will present evidence of misconduct on the part of Gerald E. Poesnecker, such evidence does not go to the question of his qualifications, under Organic Law, to retain his religious position, but rather goes to the issue of his repeated breaches of fiduciary duty owed the corporation. While it is admitted that the competency of a church official is a matter of ecclesiastical law to be decided by the highest governing body of The Fraternity, this question is not before the Court. The question before the Court concerns the breaches of fiduciary duty by Plaintiff Gerald E. Poesnecker which necessitated his removal by the duly authorized members of the corporate entity and the right of Defendants to consider these breaches as well as the competency of Plaintiffs in Defendants' decision to remove Plaintiffs.

6. Denied. The paragraph is denied as a misstatement of the case properly before the Court. Correctly stated, the issues before the Court concern the validity of Defendants' actions in removing Plaintiff Gerald E. Poesnecker, from his position as Director General/Supreme Grand Master of The Fraternity and corporate organization. As such, evidence which can properly be admitted includes evidence of fraud and misconduct on the part of Gerald E. Poesnecker in violation of his fiduciary duty.

WHEREFORE, Defendants respectfully request this Court to deny Plaintiffs' Motion in Limine to preclude consideration of religious issues.

Respectfully submitted,

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APPENDIX B — DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE CONSIDERATION OF RELIGIOUS ISSUES DATED MARCH 20, 1990

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COURT OF COMMON PLEAS
COUNTY OF BUCKS

CIVIL ACTION – IN EQUITY
NO. 89-007661

DR. GERALD E. POESNECKER ET AL

vs.

PAUL RICCHIO ET AL

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE CONSIDERATION OF RELIGIOUS ISSUES

I. HISTORY OF THE CASE

This matter arises out of dispute between various members of the Beverly Hall Corporation, which is related to the Fraternity

referenced in Plaintiffs' brief. The Defendants claim to have control of the organization due to the replacement of one of the Plaintiffs as the Director General/Supreme Grand Master of the organization and replacement of the other members of the Board of Directors. It is the Defendant's contention that such replacement was accomplished in the manner dictated by the organizational law. Central to resolving this issue is whether the Defendants had proper legal justification for removal of the former Director General/Supreme Grand Master and, if so, whether such removal was properly effectuated.

II. HOW THE QUESTIONS IS RAISED

The issue is raised by Plaintiffs' Motion in Limine to Preclude Consideration of Religious Issues.

III. QUESTIONS INVOLVED

The Plaintiffs claim that, as a matter of law, this Court must limit its jurisdiction to identification of the highest decision-making body in the Fraternity and should defer the decision of removal to this body. Defendants, conversely, believe that there are two issues before the court, and that the court has jurisdiction over both. The real issues before the court are as follows:

(1) Whether the actions of Plaintiffs Poesnecker, Briggs and Buttram violated Pennsylvania Non-Profit Corporation Law, threatened the Tax Exempt status of Beverly Hall Corporation such that Defendants had justification to remove them from the Board of Directors of Beverly Hall Corporation and thereby from their positions in the church.

Appendix B

(2) Whether Defendants, along with John MacDonald, acting as a majority of the Council of Seven had authority to remove Plaintiffs from their position on the Board of Directors of Beverly Hall Corporation and thereby from their positions in the Church.

IV. ARGUMENT

Introduction

The Defendants' actions in replacing the Director General/ Supreme Grand Master do not require that the court go to the issue of spiritual misconduct. The evidence which the Defendant's intend to produce and elicit goes to the question of Plaintiff, Gerald E. Poesnecker's, breach of fiduciary duty while in the position of Director General/Supreme Grand Master as well as the violations of the other Plaintiffs. While certain facts supportive of Plaintiff's various breaches of their fiduciary responsibility may overlap their moral and "spiritual" obligation, to preclude evidence of Plaintiffs' legal authority on the basis that it is also immoral is absurd! Yet, this is the relief Plaintiffs seek.

Defendants do not ask the court to judge whether Plaintiffs' various misconduct is unspiritual. Defendants assert that it is their right as members of the Council of Seven to make that determination themselves. On the other hand, evidence of Plaintiffs' *illegal* actions is clearly admissible to establish Defendants' right to renew Plaintiffs.

The fact that a religious organization is involved means that much of the evidence presented will be, in some remote way, connected to an internal organic law dispute or possible doctrinal schism, but much of this same evidence relates to the exact issue

which is in dispute in this matter. All disputes among members of a congregation, however, are not doctrinal disputes. *Presbytery of Beaver-Butler v. Middlesex Presbytery Church,* 507 Pa. 255, 489 A.2d 1317, 1320, cert. denied 106 S. Ct. 198 (1985).

Impropriety of Request to Avoid the Question of Retention of the Plaintiffs' Position with the Organization

Plaintiffs argues that, in the instant case, the dispute involves a doctrinal schism. In support of this contention, plaintiffs states that the parties are arguing over the leadership of the fraternity. Contrary to plaintiffs' contention, the instant case does not involve a doctrinal schism.

Where the disputes within a religious organization are questions of civil law, and not predicated on any religious doctrine, they can be solved by the civil courts without intruding into the sacred precincts. *Presbytery of Beaver-Butler v. Middlesex Presbytery Church,* 507 Pa. 255, 489 A.2d 1317, 1320-21, cert. denied 106 S. Ct. 198 (1985).

Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *Presbytery of Beaver-Butler v. Middlesex Presbytery Church,* 507 Pa. 255, 489 A.2d 1317, 1321, cert. denied 106 S. Ct. 198 (1985).

Impropriety of Request to Preclude Evidence of Misconduct by Plaintiff, Gerald E. Poesnecker and the other Plaintiffs

Plaintiffs, in attempting to hinder Defendants' submission of evidence of fraud or misconduct by Plaintiff, Gerald E. Poesnecker, state that a doctrinal schism is present. As such, they

argue, the court cannot inquire into this area due to the fact that resolution of the dispute requires the interpretation and application of religious doctrine. That illegal activity is also immoral and violates the spiritual tenets of the church is not grounds for its exclusion.

The question of fraternal leadership is so intertwined with the questions of corporate control that distinguishing between the two can be difficult, but it is essential to note that there is a difference. One area where the two concepts overlap is in the area of duty to the respective organization. While certain actions may only be relevant within the context of either the fraternity or the corporation, there are other issues which relate to both bodies.

Plaintiffs in initiating this action, asked the court to decree that they were the lawful officers and directors of the corporation, that the Defendants had no right or authority of any kind to interfere with the corporate operations to the plaintiff's exclusion, that the defendants should be enjoined from using the name of the corporation, and, basically, that the defendants should be enjoined from active participation in the workings of Beverly Hall.

While the Plaintiffs previously wanted this court to declare that they were the leaders of the corporation and to cut-off the Defendant's rights and authority to operate the corporation, they now want the court to decline to rule on the issues presented for review. Plaintiffs previously submitted the case to the court, but now are attempted to curtail the court's ability to rule.

The corporate and religious issues in dispute, although intertwined, are separable. Plaintiffs, through their Motion in Limine, seek to preclude the evidence of their own misconduct

and illegal activity, which is to be offered for the purpose of showing that Plaintiff, Gerald E. Poesnecker, is not qualified to hold the office of director General of Beverly Hall Corporation and, therefore, Supreme Grand Master under their own Organic Law. By defining the purpose of the inclusion as one concerning the religious/doctrinal precepts of the organization, the Plaintiffs misstate the reasons for submission of the evidence. In addition, such a misstatement incorrectly labeled the dispute as one involving a doctrinal schism.

If the Plaintiffs should prevail on their Motion in Limine, they will have distorted the issues of the case through an improper mechanism. The question before the court is whether the Defendants had a right to take the action they undertook in displacing the Director General/Supreme Grand Master Plaintiffs, by attempting to exclude any evidence relating to the misconduct and illegal actions undertaken by Poesnecker, are attempting to preclude the court from properly ruling on the corporate issues which are before the court by classifying the Director General/Supreme Grand Master position as a purely religious position. The Director General/Supreme Grand Master position, while intertwining the corporate and religious aspects of the organization, is still accountable as a fiduciary, a standard imposed of all corporate directors and officers. Smokescreening the issue by labeling the position a purely religious position should not be permitted.

The court can determine whether the Director General/ Supreme Grand Master was properly removed. While there is a degree of overlap between the spiritual issues and the fiduciary responsibility imposed as a result of the Non-Profit Corporation Code, there is no question that evidence concerning misconduct relating to the corporation is relevant and within the jurisdiction

of the court. Therefore, because the evidence overlaps with respect to the issues relating to the church and the corporation, all of the evidence relating to fraud and misconduct is admissible.

Impropriety of Deferring a Decision to the Religious Tribunal

In those cases in which the resolution of a property dispute between members of a religious association involves no inquiry into ecclesiastical questions, courts of the Commonwealth are to apply the same principles of law as would apply to non-religious associations. *Presbytery of Beaver-Butler v. Middlesex Presbytery Church*, 507 Pa. 255, 489 A.2d 1317, 1323, cert. denied 106 S. Ct. 198 (1985).

It is apparent that while many of the issues involved in corporate control may overlap with possible doctrinal schisms, such issues must be addressed when they are in issue, as in the present case. Not considering such evidence, based on Plaintiff's argument that it is not in dispute and therefore not relevant, fails to consider all the facts and limits the investigation into issues which are not relevant and would yield little in the way of probative evidence aimed at resolving the dispute before the court.

It is the Defendants' contention that the court can determine which organization within the larger organization can and should make the decision regarding removal of the Director General/ Supreme Grand Master.

While Defendants agree that the court cannot determine the spiritual issues involved in this dispute, the court can determine whether the Council of Seven can act to remove the Director General/Supreme Grand Master under certain conditions.

Appendix B

The law allows the court to determine the proper party to remove the Director General/Supreme Grand Master. In addition, the court can determine the procedures to be implemented in determining who should be the ruling body.

It is the Defendant's contention that they acted property in removing the former Director General/Supreme Grand Master. It is also the Defendants' contention that they acted properly in establishing a new Director General/Supreme Grand Master and other Directors of Beverly Hall Corporation. The Defendants did not change the structure of the organization, they only exercised their mandated responsibility, which is to remove the Director General/Supreme Grand Master under certain conditions.

There is no dispute that the Director General/Supreme Grand Master is the highest ranking, most powerful member, in both the corporation and the religious organization. The question for the court, though, is who can remove the Director General/Supreme Grand Master and under what circumstances can such removal occur. After answering the above, the only other issue for the court is to determine whether the Defendants acted properly in removing Gerald E. Poesnecker as Director General/Supreme Grand Master based on his actions, undertaken while holding said position.

It is the Plaintiffs' position that Gerald E. Poesnecker, as the Director General/Supreme Grand Master could not be removed. Defendants, conversely, believe that they acted properly in removing Poesnecker from his purported role. The only question for the court is whether the Defendants acted properly in removing Gerald E. Poesnecker as the Director General/Supreme Grand Master, a role which he virtually deified.

Appendix B

Whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of the church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them. *Watson v. Jones*, 80 U.S. 679, 727 (1871). If we are to follow this decision, cited by the Plaintiffs, the court should let the decision of the Defendants, which removed Gerald E. Poesnecker from office, stand. It is the Plaintiffs that originally brought this action before the court. It was their intent to have the court fully and fairly adjudicate the matter before them. Defendants firmly believe that such a full and fair adjudication will vindicate them of any wrongdoing and are anxious to settle the dispute before the court.

Although it would be a vain consent and would lead to total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed, *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 73 S. Ct. 143, 97 L.Ed 120 (1952), Plaintiffs are currently arguing that the court should override the religious body and dictate a different procedure for control of the organization. As Defendants have illustrated, because of the high degree of overlap between the corporate and religious organizations, the complete picture must first be drawn for the court so that they may determine the proper actions to be taken. It is through this mechanism, originally initiated by the Plaintiffs, that can best serve the purposes of the organization.

Defendants do not dispute the hierarchical structure of the Organization which establishes the Director General/Supreme Grand Master on top of the pyramid of power. Defendants maintain that there are circumstances which allow for the removal of the Director General/Supreme Grand Master,

including the misdeeds committed by Poesnecker.

Where, as here, a dispute arises within a church organization, the court of equity is not prevented, as Plaintiff claims, from acting to protect the property rights. *Trinity Lutheran Evangelical Church v. May*, 537 A.2d 38, 44 (Pa. Com. 1988). The court of equity has jurisdiction to protect the property rights at issue in this action. The property rights at issue here involve the financial integrity of Beverly Hall Corporation and the positional integrity of Defendants.

CONCLUSION

For the reasons stated above, the Plaintiff's Motion in Limine should be denied. The Defendants should not be precluded from eliciting evidence of fraud and mismanagement and the court should not limit itself to determining and identifying the highest tribunal in the organization. The Plaintiffs originally brought this action in equity to determine the fair and equitable course with respect to the organization. The Defendants agree that the best interest of the entity will be served by a full and complete adjudication of the issues before the court and asks the court to deny Plaintiff's Motion which would preclude such a complete adjudication is not in the best interest of both the corporation, over whom the court has jurisdiction, and the affiliated organization.

RESPECTFULLY SUBMITTED

s/ Maryann Q. Modesti
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